

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.03.2012
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
C.R.P.(PD).Nos.1235, 1236 and 1579 of 2006
& M.P.Nos.1 of 2006 (3 Nos.) & M.P.No.1 of 2008

C.R.P.No.1235 of 2006

Surya ... Petitioner

Vs

1. Pakkirisai
2. Govindaraj
3. Rajapalani
4. Padmapriya
5. Prabhu
6. Susila
7. Srinivasan
8. Dr.Kannan
9. Sethuraman
10. Thirumaran
- 11.Deivasigamani Sadharvathi

Trust rep.by Managing Trustee
Rajapalani. ... Respondents

C.R.P.No.1236 of 2006

Surya ... Petitioner

Vs

1. R. Thiyagarajan
2. T.D.Krishnasamy
3. B. Sivakumar
4. Rajapalani
- 5 .Deivasigamani Pillai Sadharvathi

Charity rep.by its Managing Trustee
Rajapalani. ... Respondents

C.R.P.No.1579 of 2006

1. Srinivasan
2. Dr.Kannan ... Petitioners

Vs

1. Pakkirisamy]
2. R.Govindaraj ... Respondents

Prayer in CRP No.1235 of 2006: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 24.3.2006 in I.A.No.266 of 2004 in I.A.No.223 of 2004 in O.S.No.138 of 2004 on the file of Principal District Judge Cuddalore.

Prayer in CRP No.1236 of 2006: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 24.3.2006 in I.A.No.269 of 2005 in I.A.No.927 of 2002 in

O.S.No.99 of 2005 on the file of Principal District Judge Cuddalore.

Prayer in CRP No.1579 of 2006: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.3.2006 in I.A.No.39 of 2005 in O.S.No.138 of 2004 on the file of Principal District Judge, Cuddalore.

Mr.S.K.Rakhunathan : For Petitioner in C.R.P.Nos.1235 and 1236 of 2006

Mr.N.C.Siddharth
for Mr.T.R.Rajaraman : For Petitioners in C.R.P.No.1579 of 2006

Mr.G.K. Ilanthiraiyan
for M/s. Sai, Bharath : For 1st respondent in C.R.P.Nos.1235 & 1236 of 2006

Mr.N.Manokaran : For R3 in C.R.P.Nos.1235 and C.R.P.No.1236 of 2006

COMMON ORDER

Since the issue involved in all these revision petitions are common and relate to a trust called Deivasigamani Pillai Sadavarthy Charity Trust, these revisions were heard together and are disposed of by this common order.

2. C.R.P.No.1235 of 2006 is directed against the fair and final order dated 24.3.2006 in I.A.No.266 of 2004 in I.A.No.223 of 2004 in O.S.No.138 of 2004 on the file of Principal District Judge Cuddalore. C.R.P.No.1236 of 2006 is directed against the fair and final order dated 24.3.2006 in I.A.No.269 of 2005 in I.A.No.927 of 2002 in O.S.No.99 of 2005 on the file of Principal District Judge Cuddalore. C.R.P.No.1579 of 2006 is directed against the fair and decretal order dated 24.3.2006 in I.A.No.39 of 2005 in O.S.No.138 of 2004.

3. The petitioner in C.R.P.No.1235 of 2006 is the second defendant in O.S.No.138 of 2004. The first respondent is the plaintiff in the suit and the other respondents are defendants 1 and 3 to 10. The petitioner in C.R.P.No.1236 of 2006 is the second defendant in O.S.No.99 of 2005. Respondents 1 to 3 are the plaintiffs and respondents 4 and 5 are defendants 1 and 3 in the suit. The petitioner in C.R.P.No.1579 of 2006 are defendants 6 and 7 in O.S.No.138 of 2004 and the respondents are the plaintiffs.

4. For the sake of convenience, the petitioners are referred to as defendants and the respondents as plaintiffs.

5. The plaintiffs filed two suits in O.S.Nos.138 of 2004 and 99 of 2005 on the file of the Principal District Court, Cuddalore for more or less an identical relief. The sum and substance of the reliefs sought for in the suits are to remove the defendants from the trusteeship of Deivasigamani Pillai Sadavarthy Charity Trust (hereinafter referred to as "the Trust") for their acts of breach of trust; misappropriation, malfeasance and misfeasance; for appointment of three new trustees, preferably the plaintiffs, who belong to a particular community; to frame fresh scheme, modifying the existing scheme suitably to the present days context; for rendition of accounts; for ordering an enquiry into

the accounts and general administration of the trust and trust properties and reimbursement of the amounts alleged to have been misappropriated out of the trust funds.

6. The defendants resisted the suit claim by filing a written statement, wherein the plaint allegations were denied. It appears that after filing the written statement, the defendants came to know that the Court had granted leave to the plaintiffs to file a suit under Section 92 of the Code of Civil Procedure (hereinafter referred to as "CPC") without notice to them and therefore, they filed I.A.Nos.266 of 2004, 269 of 2005 and 39 of 2005 to revoke the leave granted in the respective suits. Those applications were resisted by the plaintiffs by raising various averments.

7. The learned District Judge, Cuddalore by a common order dated 24.3.2006 dismissed the applications filed for revocation of the leave granted to be plaintiffs under Section 92 CPC. Aggrieved by the said order, the defendants have filed these three revisions.

8. I have elaborately heard the submissions of the learned counsel for the petitioners and the learned counsel appearing for the respondents and carefully perused the materials available on record.

9. Before we deal with the controversy in issue, certain facts which are necessary for the disposal of the Civil Revision Petitions are to be stated.

10. The trust was created by one Deivasigamani Pillai, S/o Arumugam Pillai by his last Will and Testament dated 22.6.1866 and it was created as a public charitable and religious trust. Though several facts have been placed as regards the succession of the trusteeship, in these revisions, those factual details are not required to be gone into, since the only question that has to be considered is as to whether the plaintiffs are entitled to maintain a suit for the reliefs as stated above.

11. It is seen that the suit in O.S.No.18 of 1963 on the file of District Court, Cuddalore was filed by one Radhabai Ammal and Somasundaram, who are the father and mother of the petitioner in C.R.P.Nos.1235 and 1236 of 2006. The relief claim in that suit was to remove the three trustees from the Board of Trustees and for settling a scheme for the trust. The suit came to be decreed on 6.8.1968 and the trustees were removed. The Court settled a scheme for monitoring the trust. It appears that the said Radhaabai and Somasubndaram were appointed as trustees under the scheme decree and directed them to co-opt a third trustee, from among the members of the family of the founder Deivasigamani and his son Arumugam.

12. The Scheme decree was challenged before this Court in A.S.No.842 of 1968. This Court confirmed the removal of the erstwhile trustees and upheld the appointment of Radhabai and Somasundaram as trustees and accordingly modified the scheme decree framed by the District Court, Cuddalore in O.S.No.18 of 1963. It appears that the trust has been carrying on its activities in terms of the scheme decree as modified by this Court in A.s.No.842 of 1968.

13. During 2004-2005, the plaintiffs filed the instant suits stating that the petitioners herein are acting in utter disregard to the scheme decree as approved by this Court in A.S.No.842 of 1968. In the plaint various instances have been stated by the plaintiffs viz., misappropriation of funds; the trust properties have been sold unauthorisedly without any justifiable reason; the trustees have been acting in a manner defeating the very object of the trust and in defiance of the scheme decree of the Court. Along with the plaint, registered copies of the sale deeds executed in favour of third parties were also filed. Therefore, the plaintiffs sought for removing the existing trustees and for appointing new trustees, preferably the plaintiffs and to frame a fresh scheme modifying the existing scheme.

14. Along with the suits, the plaintiffs filed an application under Section 92 read with Section 151 CPC requesting the Court to grant leave to the plaintiffs to file a suit against the defendants for their

removal from the Board of Trustees of the said trust. In the affidavit filed in support of the said application, the gist of the plaint averments have been stated. As per the scheme decree in O.S.No.18 of 1963 as amended by the judgment of this Court in A.S.No.842 of 1968, nomination of the third trustee had to be done from among the persons belonging to a particular community and that the existing trustees have not complied with the scheme decree and the second defendant, who is the sister of the first defendant has been co-opted as a trustee for name sake. It was further stated that the plaintiffs also belong to that particular community and they are the duly elected President and Secretary of the Association for persons belonging to that community in Cuddalore District and they are interested in protecting the trust created by one of the philanthropic forefathers and therefore sought for leave to institute a suit.

15. The Trial Court without issuing notice to the defendants granted leave ex parte. After service of summons in the suit, the defendants entered appearance and filed their written statement denying the plaint averments. Thereafter, separate applications were filed for revocation of leave. In the affidavit filed in support of the said applications, it was stated that the Trial Court mechanically allowed the application for leave to sue, without applying its mind and the plaintiffs have filed a suit on the ground that they belong to a particular community and this allegation was denied. It was stated that no document has been placed by the plaintiffs to prove that they belong to a particular community or they were members of the Sangam as pleaded by them. It was contended that without filing the basic documents, the suit itself ought not to have been numbered. Further, it was stated that even if they belong to that particular community, they have no right or interest in the trust. Merely because they are members of the Association, it will not clothe them with any right to institute a suit. Further it was stated that the suit itself has been filed only with a view to make personal gain and the suit itself is an abuse of process of Court. The plaintiffs filed their counter resisting the applications filed by the defendants for revocation of leave.

16. After considering the case of both parties, the Trial Court by a common order dated 24.3.2006 dismissed those applications. The Trial Court while considering the said applications had culled out the legal position and observed that it is a well settled proposition of law that permission granted without notice could be revoked at the instance of the defendants and bogus claims have to be prevented.

17. The point for consideration before the Trial Court was whether the plaintiffs in both the suits are having locus standi to invoke Section 92 of CPC for filing a suit.

18. Both the parties did not lead any oral or documentary evidence. The Trial Court after taking note of the pleadings of the parties, took note of the decision of the Honourable Supreme Court relied on by the plaintiffs in *Raje Anandrao v. Shamrao and Others* (1962 MLJ 234) and held that it would not be a bar to file a fresh suit under Section 92 CPC for removal of the trustees, despite there being already a scheme decree or administration suit relating to the trust.

19. The Trial Court next went in to the question as to whether the plaintiffs are having locus standi to file a suit and while deciding the said question, it was held that the trust is a public trust. In such a case, any two members of the public having interest, though not direct interest, could file a suit, for obtaining leave from the Court for removal of trustees on the ground of mismanagement etc. Since the plaintiffs claim to belong to that particular community, they have locus standi to maintain a suit.

20. On the question as to whether prior notice was required to be issued to the defendants for granting leave under Section 92 CPC, the Trial Court relied upon the decision of the Honourable Supreme Court cited by the plaintiffs in *Adityan v. Ramachandran Adityan* (2004 (4) MLJ 54) and

held that leave granted need not be revoked for the reason that the plaint allegations and averments disclose ample facts and cause of action for the suit and based on that only, the plaintiffs filed a suit by getting permission under Section 92 CPC.

21. Thus, on a perusal of the order impugned, it is evident that the Trial Court by relying upon the decision of the Honourable Supreme Court in *Raje Anandrao* cited supra, held that a fresh suit is not a bar even though a scheme has already been framed in respect of the said trust. The case before the Honourable Supreme Court arose out of an application seeking modification of the existing scheme and the Court was not concerned with the appointment or removal of the trustees or any other matter enumerated under Section 92 (1) CPC. Therefore the Honourable Supreme Court observed that they do not propose to consider whether it would be open to appoint or remove trustees etc., on the ground of breach of trust without recourse to a suit under Section 92 and the Court confined itself only to the question whether in a case where there is provision in the scheme for its modification by an application to the Court it is open to the Court to make modifications therein without the necessity of a suit under Section 92.

22. Thus, the case before the Honourable Supreme Court is couched on an entire different scenario and the question which came up for consideration was, though there is a provision for modification in a scheme decree, yet, should the parties be driven to file a fresh suit under Section 92. Ultimately, the Supreme Court held that it is both appropriate and convenient that a scheme should contain a provision for its modification as that would provide a speedier remedy for modification of the manner of administration, when circumstances arise calling for such modification, than through the cumbersome procedure of a suit.

23. Therefore, the decision of the Honourable Supreme Court could not have been applied to the facts and circumstances of this case, when the question before the Trial Court was as to whether when the scheme was in operation and the trust had to act in accordance with the scheme, without filing any application for modification of the scheme decree, the suit was maintainable. Further, in the case before the Supreme Court there was no prayer for removal or appointment of trustees. Therefore, this Court is of the view that the learned Trial Court erred in relying upon the said decision to hold that the earlier scheme decree would not be a bar for filing a subsequent suit.

24. In the instant case, it is seen that the scheme framed by the District Court, Cuddalore in O.S.No.18 of 1963 was challenged before this Court in A.S.No.842 of 1968. The said scheme was modified to a limited extent, but substantial portion of the decree is stated to have been confirmed. Therefore, if the impugned order is allowed to stand and the suit is tried by the Trial Court and ultimately decreed, such decree would have an effect of undoing or reversing the judgment of this Court in A.S.No.842 of 1968. Such a situation is impermissible, as the Court subordinate to the High Court cannot sit in judgment over the decision of this Court arising out of an administration of the same trust. Therefore, such anomalous situation should not have been permitted by the Trial Court.

25. The question as to whether notice is required to be issued prior to granting leave under Section 92 CPC, though several decisions have been referred to by the learned counsel on either side, it would suffice to refer to the decision of the Honourable Supreme Court in *Vidyodaya Trust v. Mohan Prasad R*, 2008 (3) CTC 868 = (2008) 4 SCC 115. The challenge before the Supreme Court was to an order of the High Court holding that leave has been rightly granted in terms of Section 92 CPC. While deciding the legal question, the Honourable Supreme Court has held thus:

"18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act (104 of 1976) the expression used was [consent in writing of the Advocate General]. This expression has been substituted by the words [leave of the Court]. Sub-section (3) has also been inserted by the

Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus, there is need for scrutiny.

19. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Paramatmanand case a suit under Section 92 CPC is a suit of special nature, which presupposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application.

20. In Swami Paramatmanand case it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the section then suit purporting to be brought under Section 92 must be dismissed.

21. In Chettiar case it was held that normally notice should be given before deciding the question as to whether leave is to be granted.

22. If in a given case notice has not been given and leave has been granted, it is open to the Court to deal with an application for revocation and pass necessary orders.

23. One of the factual aspects which needs to be highlighted is that the allegations which have been made against Respondents 2, 3 and 10 are referable to a decision taken by the Board, though may be by majority. The fundamental question that arises is whether allegations against three of them would be sufficient to taint the Board's decision. As was observed by this Court in Swami Paramatmanand case, to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard-and-fast rule to find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances.

24. On a close reading of the plaint averments, it is clear that though the colour of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes."

26. From the above judgment, it is clear that normally notice should be given before deciding the question as to whether leave is to be granted or not. In my view, considering the facts and circumstances of the case, it would have been more desirable for the Trial Court to have issued notice to the defendants before granting leave. If that procedure had been adopted, it would result in expeditious resolution of the dispute and saved substantial judicial time. In any event, the defendants having filed applications for revocation of leave, no serious consideration need be given on this point in these revision petitions.

27. The main relief sought for in both the suits is to remove the existing trustees and appoint new trustees, preferably the plaintiffs. It is not in dispute that the present trustees are functioning pursuant to

the scheme decree as approved by this Court in A.S.No.842 of 1968. Therefore, unless the said decree is modified or set aside, the Court of inferior jurisdiction would not be justified in sitting in judgment over the decision of this Court in A.S.No.846 of 1968 and remove the trustees functioning pursuant to the decree or appoint new trustees. As stated above, this anomalous situation should not be allowed to happen as the Trial Court, being the Court subordinate to the High Court is bound by the judgment rendered by this Court with respect to the very same trust.

28. In that view of the matter, this Court has no hesitation to hold that the leave to institute the suit for removal of the existing trustees and appointment of new trustees, would virtually undo the decree passed by this Court in A.S.No.842 of 1968 and therefore, the order passed by the Court below rejecting the applications for revocation of leave is held to be bad in law and accordingly requires to be set aside. Since this Court has only decided the question as to whether leave should be granted, the locus standi of the plaintiffs need not be decided in these revision petitions.

29. In the result, the Civil Revision petitions are allowed and the common order passed by the Trial Court in I.A.Nos. 266 of 2004 , 269 of 2005 and 39 of 2005 is set aside. Consequently, the connected Mps are closed. No costs.

Index: Yes/No 02.03.2012

Internet: Yes/No

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To

The Principal District Judge
Cuddalore.

T.S.SIVAGNANAM, J

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Pre-delivery order in C.R.P.(PD).Nos.1235, 1236 &
1579 of 2006

02.03.2012